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Committee on the Elimination of Discrimination against Women (CEDAW)

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 18 OF THE CONVENTION

Initial reports of States parties

HONDURAS

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PART I

(a) SOCIAL CONTEXT

The Government of Honduras signed the Convention on the Elimination of all Forms of Discrimination Against Women on 14 May 1980 and ratified it on 10 September 1980 by Decree No. 979, published in Official Gazette No. 232003. The ratification instrument was deposited with the United Nations Secretariat in November 1982.

The national health policy of the Government of Honduras, which is being implemented by the Office of the Secretary of State for Public Health, sets out the following with regard to women:

Priority shall be given to those groups which are disadvantaged in their access to health services, those groups at greatest risk (such as children under 5 years of age, pregnant women and workers) and, basically, those who live in the most socially and economically depressed geographical areas (rural areas and the outlying areas around large cities). Efforts will be made to alleviate the prevailing negative situations, such as malnutrition and infectious and/or transmissible diseases that can be controlled by simple sanitation techniques or prevented by immunization.

BASIC PROGRAMMES

(a) Health of the mother and child - the most important components will include pre-natal care, breast-feeding, assistance during confinement and care for new-born infants, monitoring of the growth and development of children under 5 years of age and family planning (understood not as a synonym for contraception, but rather as a reflection of the right of each family to seek its own well-being and its duty to take its place in society in a way that promotes the common good).

LEGAL MEASURES

The National Congress of Honduras promulgated the Family Code on 11 May 1984 by Decree No. 76-84. It entered into force one year later.

THE PENAL CODE

The Code was promulgated on 23 August 1983 and entered into force one year later, on 24 August 1984.

It abolished some laws which had been totally discriminatory against women. A small section referring to women is included. None the less, in the Agrarian Reform Act there is still discrimination against unmarried women, who are not covered by the agrarian reform.

The 1982 Constitution of the Republic reiterates the article of the 1965 Constitution which states: Article 60 - All men are born free and equal in rights. In Honduras there are no privileged classes. All Hondurans are equal before the law. It should say: All human beings are born free and equal in rights, as stated in the United Nations Universal Declaration of Human Rights.

Article 6 of the Convention requires that the States parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

Honduras has not yet signed the convention for the suppression of the white slave traffic. Exploitation of prostitution unfortunately continues to be a blemish on Honduran society.

POLITICAL LIFE

Women in Honduras have the same political rights as men, to elect and to be elected. However, the political parties, above all the traditional ones, do discriminate against women. We have only two women as full deputies and 17 as alternates, and one woman Secretary of State.

EDUCATION

As far as education is concerned discrimination does not come from the State, but from the families themselves, particularly in rural areas where parents make male children work from a very early age, and they therefore leave school.

LABOUR

According to the Labour Code, women must earn the same wages as men for the same work although, in practice, there is serious discrimination against women, particularly during the child-bearing period when the employer avoids paying maternity benefits and fails to provide sufficient crèche facilities.

There are enterprises which do not accept pregnant women. This does not happen in the Government sector, where the benefits established by the Social Security Institute, the Civil Service Act and the Labour Code are applied.

There are no institutions or authorities responsible for ensuring respect in practice for the principle of equality between men and women or providing recourse for women who have been the subject of discrimination.

ANNEX I

From the Penal Code promulgated on 23 August 1983
(entered into force one year later)

BOOK 2

SPECIAL PART

TITLE I

CRIMES AGAINST LIFE AND PHYSICAL INTEGRITY

Excerpts from: CHAPTER I

HOMICIDE

The exemption from criminal liability contained in article 7, subparagraph 15, of the 1906 Penal Code for a husband who, on surprising his wife in the act of adultery, kills, injures or abuses her or her accomplice has now been replaced by a specific offence punished by a lesser penalty than that for common homicide in the case of a person who, on surprising his spouse in the act of intercourse with another, kills or injures either or both of them, provided that the guilty party has a record of previous good behaviour and that the opportunity for committing the crime was not provoked or simply facilitated by knowledge of the conjugal infidelity. This provision also applies, in the same circumstances, to parents with regard to corruptors of their daughters aged less than 21 years while they are living in the family home (art. 122). The exemption from criminal liability applies only in the event that the injuries caused are those covered by article 136.

In the case of a mother who takes the life of her own new-born child, although this remains a heinous act in whatever light it is seen, to a certain degree her conduct or her act may have been justified in that, after the confinement, she may be suffering from the effects of a psychological trauma elicited by the prospect of her future life, if she conceived while unmarried or as a result of any other "unforeseen" circumstance.

Excerpts from: CHAPTER II

ABORTION

Article 130 regulates abortion carried out to eliminate the product of a rape. This legal category is not contemplated by the 1906 Penal Code. This provision takes account both of the age of the victim and of her mental status and psychic development. The article in question makes it punishable to carry out an abortion to eliminate the product of a rape if the woman was over 15 years of age and did not consent to it. On the other hand, when such an abortion is carried out with the consent of the woman, her husband, her conjugal partner or her parents, if she is less than 15 years of age or suffering from a mental deficiency or incomplete or retarded psychic development, none is subject to punishment.

The same exemption from liability is provided for in the case of an abortion carried out by a doctor with the consent of the woman and the persons mentioned in article 130 to save her life or to safeguard her health if it is seriously undermined or threatened by the process of pregnancy, or else to prevent the birth of a potentially defective child (article 131).

TITLE II

OFFENCES AGAINST SEXUAL FREEDOM AND DECENCY

The heading "offences against sexual freedom and decency" (delitos contra la libertad sexual y la honestidad) has been used to bring together, in Title II, Book II, of this Code, with a few exceptions, those listed under the heading "Offences against decency" in Title X, Book II, of the 1906 Code, namely rape, seduction, corruption of minors, procuring, offences against public decency and abduction.

Precisely because there has been no uniformity in respect of legally protected goods or interests, serious discussion has arisen regarding the appropriate generic designation of all of the offences included under the Title in question, since some legislations or authors refer to them as "offences against decency" (delitos contra la honestidad), others "against modesty" (contra el pudor) or against "sexual freedom" (libertad sexual), etc. To resolve this question of terminology, it has been decided to group them under the above heading: "Offences against sexual freedom and decency", since it is clear that all of the offences covered by this heading violate some relevant legal good.

Furthermore, for technical reasons the offence of incest has been removed from this family of offences and incorporated in Title IV of the same Book, which deals with offences against civil status and family order. In this connection, it should be stressed that, notwithstanding the authoritative opinion expressed by Jiménez de Asúa, who classifies offences against public decency taking the form of acts of exhibitionism as an illness and not as an offence, it has been been decided that such acts shall be punished as an offence under article 141 of this Code since, in the event of doubt in specific cases, the same provision has laid down the basis for settling such doubts by establishing the causes of non-imputability.

The offences under the heading of offences against "public decency" in Chapter III, Book II, of the 1906 Code have been removed from the list of offences because some of the acts covered by them are subsumed under other offences or misdemeanours punishable under the new Code, whereas others merit at most moral strictures.

Both in the 1906 legislation and in previous legislation, all the offences included in Title II, Book II, of this Code are clearly defined and this definition has been substantially maintained, with some slight differentiations, almost of nuance, as well as those necessitated with reference to the relevant sanctions in the new penalty-individualization system adopted.

The same cannot be said with regard to the offence of rape. This is because, even for jurists familiar with the discipline of criminal law, who are used to thinking of this offence as the act of lying with a woman by means of force or intimidation or when the woman has been deprived of reason or consciousness by whatever cause, or is under 12 years of age, when these circumstances are not all given, and in such a way that the woman alone could be imagined to be the passive subject, it can be expected that a reaction of doubt will be elicited by the fact that article 140 of this Code qualifies rape as carnal union with a person of either sex, given some of the circumstances indicated, or either of the following, which are new features of the definition of the offence: that it is committed "with a detained or imprisoned person, provided that the guilty party was said person's guard or custodian" or "when done fraudulently, with the guilty party taking the place of another person".

However, the fact is that, as regards the substantive form introduced into the description of the offence in question, i.e., the possibility of committing it on a person of either sex and not only a woman, Honduras has followed the trend set by other modern legislations - in Uruguay, Colombia, Ecuador and Costa Rica, among others - because it considered this to be juridically justified and since the legal history of our country exhibits cases of adult men who have carnally and unnaturally abused minors by the use of violence. In such cases the law itself has decreed that the courts should view and penalize such action with leniency, under the 1906 Code, as mere "indecent assault". In short, considering that the physical or organic damage and the mental trauma that such acts may cause in a male victim may be equal to or even more serious than those which occur when the victim is a female, this Code has included them under the offence of rape.

Another new feature which has been introduced in article 145, as regards the abduction of a girl aged over 12 and under 21 for indecent purposes or for matrimony, but with her consent, is the provision, in contrast to the 1906 Code, that for such an abduction to qualify as an offence, the woman must be of good reputation and not necessarily a virgin. In support of this change it is worth referring to the authoritative opinion of some writers, in whose view good reputation deserves better legal protection as a moral quality than a state of virginity, which is a contingent physical condition that does not with certainty exclude depravation or immorality. Furthermore, a great deal of precedent law has been established by the Spanish Supreme Court in interpretation of the article corresponding to our own, which requires that the victim be a virgin if the act is to qualify as this offence, holding that an offence has occurred even though this circumstance has not been fulfilled, in view of the serious prejudice suffered by the family out of which the victim was abducted.

With regard to the offence of abduction, article 147 establishes the presumption juris tantum that it has not been carried out with indecent intent.

Finally, with regard to Title II, Book II, in Chapter II, General Provisions, the following should be stressed: everyone knows that, considering the humiliation and stigma for the victim and his or her family resulting from the offences of rape, abduction, seduction and corruption of minors, the 1906 Code reserved the right to proceed individually against the guilty party by complaint (denuncia) or private prosecution (guerella) to the aggrieved person and if he or she did not have the capacity to appear before the court, by reason of age or moral state, to the parents, grandparents, siblings or guardians, in the order established by the Procedural Code (which does not definitely determine this order and refers back to the Penal Code for which reson the order of listing has been assumed). If the aggrieved person was completely destitute, the charge had to be brought by the municipal counsel (sindico municipal) or the public prosecutor, on grounds of public decency. However, it is an undeniable fact that, as regards offences against sexual freedom and decency, apart from the parents and possibly the grandparents and a few blood relatives of the victim, nobody takes care that those responsible for the offence should receive adequate punishment by initiating the proceedings provided for by the law of procedure and it is amazing to contemplate the indifference with which the municipal counsel and public prosecutors sit back and watch these offences taking place within their respective jurisdictions. It is for this reason that this Code contemplates the possibility, as an exception, of proceeding automatically or by public prosecution, i.e.: 1. When a minor with no father, mother or guardian is involved; 2. When the offence is accompanied by another offence which may be prosecuted automatically or has been committed by the parents or guardians, as may be inferred from article 152.

ANNEX II

REPUBLIC OF HONDURAS

Secretary of State for Public Health
Tegucigalpa, 1986

NATIONAL HEALTH POLICY

The health situation

1. The health situation in Honduras is closely related to the social, economic, political and cultural factors in the development of our country. Any analysis of it must include, as well as biomedical details, an indication of the great disparities which exist between the different groups of the population with reference to levels of health, allocation and distribution of available resources and access to services of all kinds, including specific health sector services.

2. There is a close relationship between economic level and social level. It is widely known that the possibility for a family to enjoy a better level of health depends on greater economic income and the way in which it is connected with the means of producing it. Furthermore, children from rural and urban outskirt areas of course run a greater risk of disease and death than those in families in which the mother and other family members are more educated.

3. It has been shown that members of families having an annual income exceeding L 10,000 suffer virtually no malnutrition. When the annual income level is between L 5,000 and L 10,000, there may be as much as 20 per cent malnutrition. In Honduras 40 per cent of families have incomes of under L 1,000 per annum. There is also a close relationship between land ownership and health, measured by nutritional level. More than 70 per cent of all children under five suffering from malnutrition in Honduras are found in families which do not own a plot of land; 15 per cent are found in families which have up to two hectares, and practically none in families which have more than five hectares.

4. Consequently, when viewed as an integral element of well-being, health cannot be the exclusive product of action in the health sector, but rather represents the interaction of the effects generated by all the sectors involved in the production of national goods and services. Without ignoring or evading the responsibility incumbent on the health sector in building health, it must be stressed that health is a social product in which each of the sectors into which the State is organized has an important role to play.

5. One of the most acceptable ways of measuring the well-being of the people is to use health indicators, one of the most appropriate of which is the state of health of the children. Mortality among children under one year of age is an indicator for measuring the overall state of health of a country's people.

In 1985, the average infant mortality rate in Honduras was 70 per 1,000, in relation to a general mortality rate of 8.3 per 1,000 inhabitants and a life expectancy at birth of 62 years. Although the level of infant mortality is still high, the trend in the last decade shows a marked and consistent downturn. Nevertheless, the gap between the infant mortality level in the towns (50.9/1,000) and in the countryside (93.5/1,000) is widening because the urban health indicators are improving more rapidly, even though both levels are tending to decline. The children of parents who work on the land and of peasants run a greater risk of dying in the first year of life. When examined in the light of the mother's education, the group with the highest infant mortality are children of women with

no education whatsoever, whether in the countryside or in the towns, and these women account for slightly over 50 per cent of all births. The highest levels - over 110/1,000 - remain those in the western regions of the country.

6. In general the level of health is dependent on:

(a) Nutrition (80 per cent of children under five suffer some degree of malnutrition);

(b) Local sanitation (inadequate water supplies, minimal provision for the removal of excreta and the disposal of refuse);

(c) Economic and geographical accessibility of services (30 per cent of the population receive no health care at all);

(d) Cultural aspects.

There are other equally important determinants which fall outside the sphere of action of the health sector. Illiteracy among persons more than 10 years old is one of the most serious problems facing Honduras and the most optimistic estimates indicate that 40 per cent of this group of the population are illiterate. As far as housing is concerned, apart from those factors inherent in the inadequate hygienic conditions of a broad sector of the population, it is calculated that there is a housing deficit of 450,000 dwelling units. It is thought that this deficit is fundamentally the result of the high rate of population growth, the high level of migration from the countryside to the towns and low per capita income.

Theory, policies and objectives

7. It is inconceivable that the country could be developed without first developing the Honduran man. Man must be the supreme aim of our society. We have an inescapable mandate to transform him into a being capable of devoting his entire creative potential to productive work, which is the principal source of our wealth. From this point of view, the protection of the human being, expressed in terms of attention to his health, is a prerequisite for social development. Among the components of social development health has a double function as a means and as an end: as an end it is part of the well-being of the individual and as a means it contributes to economic development for the achievement of well-being.

8. Social justice is a condition whereby man has his basic needs satisfied and has the opportunity of individual and collective fulfilment. With this in mind, we shall increase our action in constructing a system of protection which, while acknowledging the right of all Hondurans, contributes to reducing the disparities in the health sector by giving coverage to the 30 per cent of inhabitants who lack any kind of care and the more than 15 per cent who receive sporadic care.

9. The Constitution of the Republic refers to health as a right and duty for all citizens and indicates the guiding role that the Ministry of Health should play. Converting the right to health into a reality is one of the basic targets of the National Health Plan.

The right to health does not embody only a legal relationship resulting from the obligation of the State towards the inhabitants of the country. It also includes a person-to-person relationship, which is why no-one may evade the obligations imposed by health-related activities.

10. Solidarity is a fundamental principle which postulates the aim of social change and one of the means of achieving justice in this field is the abolition of an individualistic attitude and its replacement by one of mutual co-operation. It goes hand in hand with the notions of integration with reference to the areas of health care, universality, implying the protection of every human being and equity conceived as the main criterion for the identification and integration of human groups marginalized for various reasons and exposed to social risks of a kind and magnitude arising out of their particular living conditions.

11. The health services system will endeavour to extend health care coverage (adequate in terms of quality, quantity and timeliness) gradually to achieve the target of "health for all by the year 2000". This target involves by that time guaranteeing all Hondurans a level of health making it possible for them to enjoy a decent, socially useful and economically productive life.

Priority will be given to groups of people who do not have proper access to health services and sectors of the population at greatest risk, such as children under five, pregnant women and workers, basically those who live in the socially and economically most depressed geographical areas (in the countryside and on the outskirts of large towns). The aim will be to alleviate the prevailing negative situations, such as malnutrition and infectious and/or transmissible diseases that can be controlled by simple sanitation technology or prevented by immunization. There will be a gradual reduction in the large disparities in the health levels of different sectors of the population, and the unjust distribution of resources allocated by society for the promotion and protection of health will be corrected.

Basic programmes

12. The health of the Honduran population will depend on universal participation in this process. It will be developed as a function of the priorities established, on which the whole national effort must be focused.

The democratization of health will be a component part of the general democratic process taking place in the country.

In the planning and preferential implemention of activities, efforts will be concentrated on programmes and projects designed to deal with those areas to which priority is assigned, which will constitute the basis for extending the coverage provided by the system of basic health services. The basic programme components will be as follows:

(a) Health of the mother and child, the most noteworthy components of which will include pre-natal care, breast-feeding, attention during confinement and care for newborn infants, monitoring of the growth and development of children under five and family planning, not conceived of as a synonym for contraception, but rather as a reflection of the right of each family to seek its own well-being and its duty to take its place in society in a way that promotes the common good.

(b) Food and nutrition, which will give preferential attention to pregnant women, breast-feeding mothers and children under five, who are considered to be at greatest risk, with activities primarily designed for the monitoring and early prevention of malnutrition.

(c) Control of diarrhoeal diseases, designed to reduce the risks of illness and death by dehydration caused by diarrhoea. Measures will be focused mainly on the prevention and timely treatment of dehydration by administration of hydrating salts, promotion of breast-feeding and individual and collective health education.

(d) Acute respiratory infections, focused on the prevention and treatment of these problems which, together with diarrhoea, are responsible for over half the cases of infant mortality.

(e) Extended immunization programme, designed to achieve total and lasting coverage, in the shortest possible time, by means of vaccination against poliomyelitis, DPT (diphtheria, pertussis and tetanus), measles and BCG (Calmette-Guérin Bacillus) for children under one and tetanus toxoid for pregnant women.

(f) Water and sanitation, focusing on improving the environment by means of the adequate provision of drinking water and sanitary arrangements for disposal of excreta and solid waste as a means of eliminating the vectors transmitting diseases on the priority control list.

(g) Malaria control: This disease is one of the most frequent causes of illness and its control can only be achieved by means of an adequate programme and a system of permanent and ongoing monitoring.

These fundamental guidelines for available resources must not be taken as a disavowal of the need for implementation of the remainder of the programmes or attention to other health problems, activities in respect of which are designed to supplement the basic measures.

Strategies

13. In order to implement the policies and achieve these objectives and the target, the system will develop machinery by means of which the health sector may permanently reorganize its activities and resources in line with the needs of the population at large, which will in addition enable it to meet the requirements of and establish the necessary co-ordination with other national development sectors whose activities have a significant impact on achieving the target.

14. We consider that the full, conscious, orderly, effective, responsible and informed participation of the community in realizing its well-being is essential for obtaining and maintaining an adequate level of health. This participation, which must be made viable through democratic and practical machineries, relates not only to the provision of human resources capable of producing community action, but also, fundamentally, to the identification and determination of priorities among problems, the planning of services capable of dealing with them and the administration of the relevant programmes, including the follow-up, monitoring and evaluation of their implementation. Use will be made of all forms of formal and informal association, either existing or potential, as a function of the development of health in Honduras.

15. We shall make the necessary efforts to bring about co-ordinated and effective action of all the institutions in the health sector, as well as among the other sectors whose objectives affect or supplement those of the health sector. This intra- and multi-sectoral action will be promoted at all levels, from the formulation of common policies and concrete programmes, with the clear definition of specific and complementary responsibilities, to the implementation and comprehensive evaluation of such programmes.

From this multi-sectoral standpoint and in order to facilitate inter-sectoral co-ordination, the necessary steps will be taken to provide sufficient institutional coherence to bring about enhanced efficiency in the health sector and to strengthen the position of the Ministry in pursuance of the terms of the Constitution.

16. Conditioning people's behaviour with regard to health and developing an attitude in line with the new requirements, both on the part of the provider of the services and on that of the user, is a crucial factor in implementation of the programmes. Health-building depends to a large degree on decisions taken by individuals on a day-by-day basis, within families and communities, and therefore health education designed to bring about significant behavioural changes will be one of our principal tasks and will be an integrating element in all the programmes, placing emphasis on the formulation and implementation of a national programme incorporating innovative methods and techniques.

17. It will be a basic strategy to enable the health services system to cope with requirements. It must be made possible to channel resources to areas to which priority is assigned. The strategy will be based on an upgrading of care, from the most elementary to the most complex levels, and decentralization in the general administration of the programming, implementation and evaluation of activities and the management of financial, human, physical and technological resources.

18. The development, tailoring and use of technologies suited to the country's real situation and its resources will be intensified, giving priority to those technologies which make it feasible to achieve the objectives envisaged. This will include the proper selection of existing technologies and the development of new ones. The University, technical institutes, research institutes, health services and scientific organizations must co-ordinate their efforts in this task, and it must focus on the orientation and updating of the human resources of the health system.

19. The development of human resources is essential for translating the policy into programmes of effective action. Members of the family, the community and work centres, as well as the professionals and technicians of specialized scientific institutions will be involved. The efforts devoted to appropriate planning of the human resources that the system requires merit special attention.

In this process use will be made of new educational and institutional technologies designed for dissemination of knowledge and development of the capacities essential for enhancing the effectiveness of the system.

20. Reinforcing the supply sub-system to ensure the timely provision and appropriate handling of medicines and other critical inputs will be a basic strategy feature. Efforts will be made to expand the capacity and means of production of the pharmaceutical laboratory of the National Juvenile Affairs Board and the country's pharmaceutical industry in general with regard to medicines considered to be essential, in so far as evaluations indicate that the market is adequate and the technology appropriate for generating prices favourable to consumers. One aspect of this is the development of suitable systems to guarantee access to essential medicines for the entire population.

21. Without doubt, an essential feature of this crusade will be external financial and technical co-operation. By "external co-operation", in whatever form, is understood a supplement to the national effort, which will be accepted when it is in line with the objectives fixed by the country.

The health system

22. The financial investments allocated for physical infrastructure will be used for the completion and start-up of health establishments, gradually, as operating resources make it possible to assimilate the hospital infrastructure under construction and the remodelling and equipping of the existing infrastructure. The highest priority in this area will be assigned to investments for the installation and equipping of the peripheral health units which constitute the basis for

extension of coverage to sectors of the population which lack permanent services, and provision of human resources for those units. The emphasis will none the less be placed on the development of sub-systems making it possible to enhance the output of already existing infrastructure.

23. This reorientation of the health system will require the search for non-traditional sources of financing and for flexible and functional machinery designed to:

(a) Promote the democratic, participatory and decentralized formulation of plans, programmes and projects to translate the policy into action at all levels;

(b) Strengthen the planning and administrative processes to ensure efficiency and effectiveness;

(c) Develop local programming processes, with their principal programming, supervisory and information-system components, thereby bringing about a commitment to action with the national community;

(d) Strengthen the logistics and maintenance sub-systems so that the system may function properly;

(e) Improve and seek sources of financing to ensure that development is focused on the critical aspects of the system;

(f) Modernize and update the Health Code, which defines the legal framework for protection of the people's health in line with the country's real situation.

The commitment

24. Finally, we wish to point out that these policy guidelines can be fulfilled only if they are internalized by the institutions in the sector, all health workers and all national organizations. The commitment to the people, the accomplishment of the undertaking with the greatest possible conviction, enthusiasm and devotion to the work being done and the development of a service mystique and an unshakeable faith in what is being done will be the factors that can overcome the obstacles arising.